

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: John M. Smith III, et al.

Serial No.: 10/696,484

Examiner: Erma C. Cameron

Filed: October 29, 2003

Art Unit: 1762

Confirmation No.: 6978

For: **TREATED INHERENTLY FLAME RESISTANT POLYESTER FABRICS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**SUPPLEMENTAL SUBMISSION**

Sir:

This paper supplements the AMENDMENT AND PETITION FOR EXTENSION OF TIME AND REQUEST FOR CONTINUED PROSECUTION filed on December 31, 2007.

At the top of page 7, that amendment makes the point that anti-microbial finishes can deleteriously affect the FR properties of the TREVIRA CS<sup>TM</sup> so that it would not necessarily pass the NFPA-701 test. The enclosed declaration of John Smith provides evidentiary support for this assertion. Paragraph 5 of his declaration points out that the application of an excess concentration of an organosilane anti-microbial finishes can impair the ability of what would otherwise be an FR fabric to pass NFPA701 tests, particularly because of melt dripping. The addition of more finishes can alter or negate a properties already existing. Thus, it is incorrect to simply assume that it would have been obvious to add the anti-microbial organosilane finish of the White reference to either the European or Japanese products.

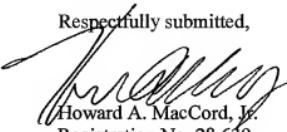
In paragraph 7 of his declaration, Mr. Smith points out that the fabrics made in accordance with the invention have had substantial commercial success. He reports that the fabric is largely used in hospitals, a very demanding situation, and purchasers for hospitals closely scrutinize the properties of items purchased. Mr. Smith goes on to say that Applicant's assignee's customers are vendors of hospital supply products such as the draperies used in hospitals and bedding in hospitals. The vendor carefully monitors the properties of the products to be sure they meet the hospital standards. According to Mr. Smith's declaration, since introduction of applicant's products to this specialized market three years ago, the number of square yards of the fabric has grown to 400,000 square yards in fiscal year 2007. This evidence of substantial commercial success must be considered when evaluating the obviousness of the claimed invention.

As Mr. Smith's declaration points out the commercial success of the invention is not due to extensive advertising or other promotional efforts, other than what has been needed to point out and demonstrate the properties that this unique inventive fabric has attained. The sales growth to this line indicates that there is a demand and market for the product obtained using the claimed process. That sales growth is properly attributable to the advantages of the invention, and not advertising or promotional efforts.

The Blehm reference issued in 1989, the Japanese disclosure was published in 1991, and the European publication took place in November 1992. If all the tools were available from these published references and the invention had been, in fact, obvious from those disclosures for this period of time (ten years, up until applicant's effective filing date of September 27, 2001),

textile companies in the mid-90's would have taken advantage of the market that applicant is supplying. That they did not is due to the fact that it was not obvious to use the invention. Therefore, the obviousness rejections should be withdrawn and the application passed to issue.

Respectfully submitted,



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